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No. 217

In The

Supreme Court of the United States

October Term, 1932.

Guaranty Trust Company, Executor, Etc.,
Appellant,

vs.

William H. Blodgett, Tax Commissioner,
Appellee.

Appeal from the Superior Court of Fairfield County, Connecticut.

STATEMENT AS TO JURISDICTION.

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OCTOBER TERM, 1932.

No. 217.

GUARANTY TRUST COMPANY, EXECUTOR, ETC.,
Appellant,

vs.

WILLIAM H. BLODGETT, TAX COMMISSIONER,
Appellee.

APPEAL FROM THE SUPERIOR COURT OF FAIRFIELD COUNTY, CONNECTICUT.

STATEMENT AS TO JURISDICTION.

Pursuant to Rule 12 (1) of the Rules of this Court, appellant submits this statement showing that the appeal in the above entitled cause is properly before this Court.

OPINIONS BELOW.

The opinion of the Supreme Court of Errors of the State of Connecticut (R. 19),* upon the questions of law reserved to it by the Superior Court for Fairfield County (R. 16), is reported in 114 Conn. 207 and 158 Atl. 245. No opinion was delivered by the Superior Court.

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* Pages refer to the unprinted record.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 237 (a) of the Judicial Code, as amended by the Acts of February 13, 1925, January 31, 1928, and April 26, 1928.

(1)

APPEAL TIMELY TAKEN.

The order from which this appeal is taken was entered on April 15th, 1932 (R. 37). A petition for appeal (R. 42) accompanied by assignments of error (R. 49) was on June 22, 1932, presented to Hon. Alfred C. Baldwin, Presiding Judge of the Superior Court of Fairfield County, Conn., and the appeal was by him allowed on the same day (R. 40). Citation of appeal with service acknowledged was filed on June 22, 1932 (R. 48), and the case was docketed in this Court on July 12, 1932.

(2)

FINALITY OF JUDGMENT.

The judgment (R. 37) forming the basis of the appeal is a final judgment in the sense that an affirmance of it would leave nothing to be done by the court below but to execute the judgment already rendered.

Bostwick v. Brinkerhoff, 106 U. S. 3.
Georgia Ry. Co. v. Decatur, 262 U. S. 432, 437.
Blodgett v. Silberman, 277 U. S. 1, 6.

The judgment is for a specific amount and is on its face final in form as well as in substance, and disposes of all elements of the controversy.

Mower v. Fletcher, 114 U. S. 127.
Carondelet Canal Co. v. La., 233 U. S. 362, 371, 373.
Haseltine v. Cent. Bank of Springfield, 183 U. S. 130, 131.

(3)

JUDGMENT OF THE HIGHEST COURT.

The judgment of the Superior Court is that of the highest court in which, under the laws of the state, such judgment could be had. In this case the questions of law were reserved to the Supreme Court of Errors. Then the Superior Court, following the advice of the Supreme Court of Errors, entered a judgment giving full effect to the rulings of the higher court. Under such circumstances, no further appeal may be had to the Supreme Court of Errors or to any other court in the state.

See *Certificate of the Chief Justice of the Supreme Court of Errors* (R. 51).

There being no further right of appeal,

Salomon v. Tax Commission, 278 U. S. 484, 486,

Myers v. International Trust Co., 273 U. S. 380, 381,

nor any discretionary review in a higher court,

Virginia Ry. Co. v. Mullens, 271 U. S. 220, 222,

the appeal herein is taken from "a highest court of a state in which a decision in the suit could be had."

(4)

VALIDITY OF A STATE STATUTE DRAWN INTO QUESTION AND DECISION IN FAVOR OF ITS VALIDITY.

In this suit appellant contended in the courts below that a state statute, as applied, was repugnant to the Constitution of the United States, and the decision was in favor of its validity.

(a) *The Statute.*

The statute whose validity was drawn into question is Chapter 190, Sec. 1 of the Connecticut Public Acts of 1923, which provides:

> "*All property and any interest therein owned by a resident of this state at the time of his decease,* * * * which shall pass by will or inheritance under the laws of this state; and all gifts of *such* property by deed, grant or other conveyance, made in contemplation of death of the grantor or donor, or intended to take effect in possession or enjoyment at or after the death of such grantor or donor, shall be subject to the tax herein prescribed.' (Italics supplied.)

Indirectly there is also drawn into question the validity of a subsequent amendment of this statute, being Sections 1 and 2, Chapter 299, Public Acts of 1929 (See p. 10, *infra*).

(b) *Application of the Statute or Nature of the Case.*

The validity of the above statute is questioned as applied to the following facts, stated by the Supreme Court of Errors (R. 20):

> "Harriet D. Sewell died on May 20, 1930, domiciled in Greenwich. On December 28, 1926, she executed an irrevocable deed of trust to a New York trust company of certain securities therein described in which deed it was provided that the trustee collect the income and pay it to Mrs. Sewell during her life; upon her death the income was to be paid to her husband during his life, and upon his death the trustee was directed to pay and transfer the principal of the trust absolutely to their daughter, if she survived, but if not, then to the issue of the daughter, with a gift over in default of such issue."

The stipulation of facts filed in the court below contained a provision that *this transfer was not made in contemplation of death* (R. 4).

On the question whether the succession tax was applicable to this transfer, the Probate Court held in the negative. The Tax Commissioner appealed to the Superior Court which, upon advice received from the Supreme Court of Errors, held (i) that the property which was the subject of the transfer, passed by deed, grant, or gift, intended to take effect in possession or enjoyment at the death of the grantor or donor within the meaning of the Connecticut Succession Tax Statute in force at the execution of the instrument of transfer; (ii) that the imposition of such tax thereon transgressed no provision of the United States Constitution; (iii) that the property should be valued as of the date of the death of the decedent; and (iv) that the tax should be computed on such valuation (R. 38).

(c) *Constitutional Question Timely Raised.*

The validity of the above statute was first drawn into question by a "stipulation of questions of law" (R. 16) of which the second question reads as follows:

> "If said transfer is held to be taxable within the meaning of the applicable succession tax statute, would the imposition of such tax offend against Amendment XIV of the Constitution of the United States or against any other provision of said Constitution?"

The federal question was thus timely raised in the court below, although, for the purposes of the jurisdiction of this Court in this case, it is immaterial whether the constitutional question was actually raised, since it

was expressly decided by the state court, and was therefore "drawn into question."

Home Insurance Co. v. Dick, 281 U. S. 397, 407.
Silver v. Silver, 280 U. S. 117, 122.
Mallinckrodt Works v. St. Louis, 238 U. S. 41, 49.

(d) *Constitutional Question Sufficiently Raised.*

The above constitutional question was raised in general terms without specifying the particular clauses in the 14th Amendment or in the other provisions of the federal Constitution. Appellant is aware of the cases in which it had been intimated by this Court that a general reference to the 14th Amendment may not be sufficient.

Clarke v. McDade, 165 U. S. 168, 172-3;
Marvin v. Trout, 199 U. S. 212, 223-5;
Hiawassee Power Co. v. Carolina-Tenn. Co., 252 U. S. 341, 343.

But in such cases the doubt as to whether the constitutional question had been raised with sufficient particularity is dispelled, if the state court expressly passes on the constitutional question.

However, since in the present case the Supreme Court of Errors ruled on the constitutional question in the same general terms as used by the question itself (R. 30), appellant obtained from the Supreme Court of Errors a Certificate (R. 51) showing that under the phrase "does not transgress the 14th Amendment" the Court considered both the due process clause and the equal protection clause of the 14th Amendment; and under the phrase

"any other provision" the Court considered the contract clause of Article I, Section 10 of the Constitution.

Whitney v. Calif., 274 U. S. 357, 360-2;
Capital City Dairy Co. v. Ohio, 183 U. S. 238, 244;
Armstrong v. Treasurer, 16 Pet. 281, 285, 286;

(5)

EXTENT OF THIS COURT'S JURISDICTION.

We have assigned as error (R. 49-50) the ruling of the court below that the tax as applied did not transgress the due process, equal protection and contract clauses of the Constitution.

(a) *Application of the Statutes Without Due Process.*

This Court has jurisdiction on appeal to determine whether a state statute, not invalid on its face, is unconstitutionally applied.

Fiske v. Kansas, 274 U. S. 380, 385;
Panhandle Oil Co. v. Knox, 277 U. S. 218, 222;
Quaker Cab Co. v. Pennsylvania, 277 U. S. 389, 401.

In this case, appellant is not contending that the state may not, consistently with the due process clause, impose a tax on the transfer of or succession to property intended to take effect at or after the death of the donor. Appellant's contention is that the state may not, consistently with the due process clause, impose a tax on a transfer of property which had vested absolutely in the donee or transferee before the death of the donor, under the guise of taxing a transfer intended to take effect at or after death. Appellant contends that the decedent, at

the time of her death, retained no interest in the property on the transfer of which a succession tax could be imposed,

May v. Heiner, 281 U. S. 238

and that the transfer was not one intended to take effect in possession or enjoyment at or after the death of the transferor.

Coolidge v. Long, 282 U. S. 582.

While the decision of the court below on the construction of the statute is entitled to great weight, its ruling on the operation and effect of the statute is not conclusive upon this court in determining whether through such construction the state violated a right under the Federal Constitution.

Coolidge v. Long, 282 U. S. 582, 597;
N. J. Bell Tel. Co. v. Tax Bd., 280 U. S. 338, 346-347.

It is apparent from the opinion that the court below conceded that a succession tax could not be imposed on a transfer which is absolute at the time made. But in order to apply the tax, the court below held that the transaction was one in which the possession or enjoyment was intended to take effect at or after the death of the donor. This Court has jurisdiction on appeal to determine whether such interpretation of the transaction was correct, in order to determine whether appellant's constitutional rights have been violated.

Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 290.

(b) *Denial of Equal Protection.*

Appellant concedes that the state is not precluded from imposing a tax, by whatever name, on this type of trans-

fer *inter vivos*, provided a substantially similar tax is imposed on the other gifts *inter vivos* in the same or in other statutes.

Gregg Dyeing Co. v. Query, 286 U. S. —; 76 Law. Ed. 852, 856; 52 Sup. Ct. 631, 634;
Continental Baking Co. v. Woodring, 286 U. S. —; 76 Law. Ed. 816, 824; 52 Sup. Ct. 595, 601.

But the state of Connecticut imposes no tax on gifts *inter vivos*, and the imposition of the tax on this class of gifts alone, has no rational basis in classification. The tax is therefore violative of the equal protection clause of the 14th Amendment, especially since, as was stipulated, the transfer was not made in contemplation of death.

Schlesinger v. Wisconsin, 270 U. S. 230, 240;

Compare also

Heiner v. Donnan, 285 U. S. 312, 328.

(c) *Impairment of Contract.*

The instrument whereby the property in question was transferred (R. 5-8) constituted a contract between Mrs. Sewell and the Guaranty Trust Co., and the rights of the parties in the property were determined as of the date of that contract. Appellant contends that under that contract Mrs. Sewell retained no interest in the property except income for life, and at her death there was no interest at all on the transfer of which the succession tax could be imposed. The court below, in upholding this succession tax, *measured by the decedent's interest in the property at the time of her death*, so interpreted the contract as to vary the rights of the contracting parties.

The first question reserved for the advice of the Supreme Court of Errors was whether the transfer in question was intended to take effect in possession or enjoyment at or after the death of the grantor within the meaning of the Connecticut succession tax statute in force at the date of the execution of the deed of trust, or within the meaning of any subsequent amendment or revision of said succession tax statute (R. 16). That court held that the transfer was intended to take effect at the death of the grantor within the meaning of the statute in force at the execution of the instrument of transfer (R. 35), and judgment was entered accordingly. In effect, however, the Supreme Court of Errors made no distinction (R. 23) between the Act of 1923, in force at the execution of the transfer, and the subsequent amendment of 1929 (Pub. Acts 1929, Ch. 299, Secs. 1 and 2; Gen. St. (1930), Ch. 77, Secs. 1360, 1361). The pertinent provisions of this amendment are as follows:

> "*Sec. 1360. Tax on Transfers of Property.* A tax is imposed, * * * upon transfers, in trust or otherwise, of the following property or any interest theerin or income therefrom: (a) When the transfer is from a resident of this state; * * *
>
> "*Sec. 1361. Transfers, When Taxable.* The transfers enumerated in Section 1360 shall be taxable if made: * * * (d) by gift or grant intended to take effect in possession or enjoyment at or after the death of the transferor. A transfer of property in respect of which the transferor reserves to himself a life income or interest shall be construed prima facie to have been intended to take effect in possession or enjoyment at death; * * * "

Although the Supreme Court of Errors stated in its opinion that the transfer in this case involved no retrospective operation of the law (R. 23), its opinion and

judgment are sustainable only under the 1929 Amendment of the taxing statute. In other words, appellant maintains, while interpreting a prior statute, the court below really gave effect to a later taxing statute, contrary to the contract clause of Art. I, Sec. 10 of the Federal Constitution.

> "In deciding this question, this court is not limited to the mere consideration of the language of the opinion of the state court, but will consider the substance and effect of the decision, and will for itself determine what effect, if any, was given by it to the repealing (in this case—amending) act."—*Long Sault Development Co. v. Call*, 242 U. S. 272, 277.

See also:

Louisiana Ry. & Nav. Co. v. New Orleans, 235 U. S. 164, 171;
McCullough v. Virginia, 172 U. S. 102, 116-7;
Hubert v. New Orleans, 215 U. S. 170, 175;
Carondelet Canal Co. v. Louisiana, 233 U. S. 362, 376.

(d) *Interpretation of the Contract.*

This invasion of appellant's rights under the contract clause brings within the scope of this Court's jurisdiction an independent consideration of the nature of the transfer, namely, whether it was intended to take effect at or after the death of the grantor.

Coolidge v. Long, 282 U. S. 582, 597;
Larson v. South Dakota, 278 U. S. 429, 433;
Applebee v. City of New York, 271 U. S. 364, 380.

Assuming, however, that the state court gave no effect to the later statute, that the state did not *pass a law* impairing the obligations of contract, within the meaning of Art. 1, Sec. 10, and the interpretation of the statute is presumed to be the interpretation as of the time of its enactment,

Tidal Oil Co. v. Flanagan, 263 U. S. 444, 451

still, when a state court so interprets a contract, varying the obligations thereunder, that, had the decision been enacted into law, it would have been contrary to the contract clause, and the judgment is assailed under the due process clause, this court, in passing on the constitutional claim, will not be bound by the state court's interpretation of the contract, but will follow its own interpretation.

Coolidge v. Long, 282 U. S. 582, 597.

In that case Mr. Justice Butler stated the rule more broadly:

> "It is well understood that, when the jurisdiction of this court is invoked to determine whether a state law impairs the rights of the litigant under a prior contract, or whether the State is depriving him of his property without due process of law in violation of the Fourteenth Amendment and the question turns upon the existence or terms of a contract, this court is bound to determine for itself whether there is a contract and to ascertain its true meaning and effect. That rule is necessary in order that this court may properly enforce these provisions of the Constitution."

In other words, the rule as to interpretation of a contract, lying at the basis of a claim under the due process clause, is the same as is applicable to a contract lying at the basis of a claim under the contract clause.

The rule as stated by Mr. Justice Butler is a corollary of the *ratio decidendi* at the basis of this Court's jurisdiction in such cases as

Eureka Pipe Line Co. v. Hallahan, 257 U. S. 265, 270;
Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 290.

The rule may be generalized thus: *Where it is claimed that a state statute, as applied to a given transaction, violates a right guaranteed by the Constitution, and the state court, conceding that such application of the statute would be unconstitutional, nevertheless holds the statute applicable by interpreting the transaction to be otherwise than claimed, this Court, on appeal from such decision, will follow its own interpretation of the transaction in determining whether the appellant's constitutional rights have been violated.* In this respect it is immaterial what is the type of transaction, and what provision of the Constitution is invoked.

The facts in this case are not in dispute, and from the decision of the court below it may be assumed that, had it considered the transfer in question as not having been made to take effect at or after the death of the grantor, it would have held a succession tax on such transfer violative of the *due process clause* and a gift tax on such transfer violative of the *equal protection clause*. Having held the tax applicable, the mistake, if any, of the court below is *at least* in the interpretation of the transfer. Appellant submits, therefore, that whether its constitutional claim rests on the due process clause or on the equal protection clause, this Court's jurisdiction extends to an independent interpretation of the transfer in question.

Wherefore it is respectfully submitted that the appeal in the above entitled cause comes within the proper jurisdiction of this Court.

Dated 5th day of August, 1932.

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